

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVE SANDS,

Plaintiff,

-against-

CBS INTERACTIVE INC.,

Defendant.

Case No. 18-cv-07345 (JSR)

ECF Case

REPLY DECLARATION OF ELEANOR M. LACKMAN

ELEANOR M. LACKMAN declares as follows:

1. I am a member of the Bar of this Court and a partner in the law firm of Cowan, DeBaets, Abrahams & Sheppard LLP, attorneys for defendant CBS Interactive Inc. (“CBSi”) in this proceeding. I submit this reply declaration in further support of CBSi’s Partial Motion for Summary Judgment against Plaintiff Steve Sands’ (“Plaintiff” or “Sands”) pursuant to Federal Rule of Civil Procedure 56 (“Motion”). Primarily this reply declaration serves to correct the record regarding certain issues pertaining to evidence proffered by Sands in opposing CBSi’s Motion.

2. On January 10, 2019, I took the deposition of Plaintiff. Attached hereto as **Exhibit A** is a true and correct copy of relevant excerpts of the transcript of that deposition.

3. Attached hereto as **Exhibit B** is a true and complete copy of the article entitled “Jon Bernthal Starts Filming Marvel’s The Punisher,” along with all pages in the “gallery view,” on the website located at the URL <https://www.comingsoon.net/tv/news/772863-photos-jon-bernthall-starts-filming-marvels-the-punisher>, as it appeared on February 12, 2019.

4. Attached hereto as **Exhibit C** is a true and complete copy of documents produced by Getty Images (U.S.), Inc. (“Getty”), pursuant to a subpoena issued by CBSi, which provide the images that correspond to the “Asset Numbers” listed in the Getty royalty statements produced by Sands (*see* Dkt. 35 ¶ 3, Ex. A) (the “Getty Photo Sheets”).¹

5. For ease of reference, excerpted below are the photographs at issue in this lawsuit (the “Lawsuit Images”), as reproduced from Exhibit A of Sands’ Complaint (*see* Dkt. 1, Ex. A), with corresponding Asset Numbers as provided in the Getty Photo Sheets.



Asset Number: 612917**244**



Asset Number: 612917**252**



Asset Number: 612917**284**



Asset Number: 612917**344**



Asset Number: 612917**320**

¹ Although the documents were designated by Getty Images as “confidential,” on February 13, 2019, Getty Images confirmed that they were no longer maintaining that designation.

6. The photographs purportedly used by Microsoft (the “Microsoft Photographs”) bear Asset Numbers 612917**272** and 612917**248**. *See* Dkt. 35, Ex. A at Sands_810 (emphases added). Neither of the Microsoft Photographs are the Lawsuit Images.

7. The photographs purportedly used by Hearst (the “Hearst Photographs”) bear Asset Numbers 612917**344** and 612917**288**. *See* Dkt. 35, Ex. A at Sands_823 (emphases added). Only one of the Hearst Photographs is a Lawsuit Image.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
February 15, 2019



ELEANOR M. LACKMAN